



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
222**

**DISTRIBUTION
DATE
October 1, 1998**

1. SUBJECT: DIRECTOR'S COMPLAINTS

2. PURPOSE: To set forth the procedures for recommending, issuing and processing Director's Complaints.

3. BACKGROUND: Government Code section 12961 empowers the Department of Fair Employment and Housing (DFEH) Director to file complaints alleging a violation of the Fair Employment and Housing Act. A Director's Complaint is usually appropriate in those instances where there appears to be a pattern of discrimination and/or where groups of persons are being adversely affected by the discriminatory practices. A Director's Complaint may be initiated as a result of an individual complaint or as a result of a request from an external source.

4. PROCEDURES:

A. Pre-Recommendation Considerations:

Requests or recommendations for Director's Complaints resulting from internal complaints will be evaluated by the District Administrator. Requests for Director's Complaints from external sources will be routed to and evaluated by the Special Investigation Unit (SIU) Administrator.

- 1) The District Administrator or SIU Administrator will decide whether a proposal for a Director's Complaint will be recommended by evaluating the request in accordance with the following criteria:
 - a) The respondent is significant or large such that the anticipated remedy would impact upon a large number of individuals or upon an entire industry; or
 - b) The allegations in the complaint address an important legal issue in an area where the Department wishes to establish case law; or
 - c) Resolution of the complaint will have a civil rights impact consistent with Department priorities.

- 2) If the source of the proposal has not provided sufficient information on which to file a complaint, the District Administrator or SIU Administrator may attempt to supplement the original information before rejecting the proposal. Sources of supplemental information are:
 - a) The individuals actually bringing the issue(s) in question to the attention of the requesting group or any witnesses who have been identified by the requestor of the proposal.
 - b) DFEH open files and any previously filed complaints that have been processed against the respondent.
 - c) The U.S. Equal Employment Opportunity Commission (EEOC) for the current EEO-1 form for the respondent.

There is to be **NO respondent contact** for the purpose of informal data collection or preliminary investigation prior to a signed complaint without prior clearance from the appropriate Regional Administrator.

B. Recommending the Complaint:

- 1) Where a Director's Complaint is being recommended by the District Office and the District Administrator has determined that the complaint is to be transferred to the SIU for processing, the following materials should be routed to the appropriate Regional Administrator. Where the Director's Complaint is being recommended by the SIU Administrator, it will be handled in the same fashion except that it will be routed to the Chief Counsel and Deputy Director Enforcement Division.
 - a) A memorandum containing the following (refer to Attachment 1 for format):
 - Respondent description;
 - Source of proposal;
 - Issue to be investigated and supporting information;
 - Size and scope of investigation;
 - Justification.
 - b) A draft of the recommended complaint.

(NOTE: In the section for complainant's name, the word "Director" followed by the name of the Department Director will be used.)

- c) Any other materials that would support whether the complaint should be filed.
- 2) At the time this material is forwarded to the Regional Administrator or the Chief Counsel and Deputy Director Enforcement Division, a letter is to be sent to the initiator of the request (if known) acknowledging receipt of the information and/or advising that within 60 days a decision will be made as to whether the Director will pursue the matter.
- 3) Recommendations from the District Offices, if approved by the Regional Administrator, will be submitted to the Deputy Director Enforcement Division. The recommendation, if approved by the Deputy Director Enforcement Division, will be forwarded to the Director and the Chief Counsel for consideration.
- 4) Recommendations from the SIU, if approved by the Chief Counsel and Deputy Director Enforcement Division, will be forwarded to the Director for consideration.

C. Recommendations Not Approved:

In the event that the District Administrator's or SIU Administrator's recommendation is not approved:

- 1) A memorandum will be issued to the District Administrator or the SIU Administrator at the level at which it was rejected, (e.g., Director, Chief Counsel, Deputy Director Enforcement Division or Regional Administrator) explaining the reasons for disapproval; and
- 2) A letter signed by the District Administrator or SIU Administrator will be sent to the initiator of the complaint explaining why DFEH will not pursue the matter. This letter should include a paragraph suggesting alternative avenues of recourse, including the filing of individual complaints by the affected persons.

D. Recommendations Approved:

- 1) If a Director's Complaint is approved, the complaint, signed by the Director, will be returned to the appropriate District Office that services the area where the respondent is located. The complaint will be filed, dual filed with EEOC if jurisdictional, served, and then exported to the SIU Consultant as designated by the SIU Administrator. Copies will also be

sent to the Director, Chief Counsel, Deputy Director Enforcement Division, and Regional Administrator.

- 2) A letter signed by the District Administrator or SIU Administrator will be sent to the initiator of the complaint (if known) advising that the matter will be pursued by the SIU. A copy of the complaint will be enclosed.
- 3) The SIU Administrator will determine the priority of the complaint and establish a target date for completion, unless priority has been previously determined.

E. Responsibility For Processing:

- 1) The SIU has the primary responsibility for processing the Director's Complaint under the supervision of the SIU Administrator.
- 2) Settlement terms will be approved by the Chief Counsel.
- 3) Settlement Agreements will be signed by the Director or any person designated by the Director.

F. Closing the Case:

- 1) When the case is ready for closure, a copy of the investigative report or administrative closure (with attachments) will be sent to the Director, Chief Counsel, Deputy Director Enforcement Division, and Regional Administrator. (A 14-day letter is not required for Director's Complaints.) A letter signed by the SIU Administrator is to be sent to the initiator of the complaint (if known) advising of the disposition of the case.
- 2) The case will be returned to the District Office in which it was initially filed for closure in accordance with standard procedures.

5. APPROVAL:

Nancy C. Gutierrez, Director

Date

Memorandum

Date :
To : Regional Administrator
From : Department of Fair Employment & Housing
District Administrator
Subject : Recommendation For a Director's Complaint

1. Respondent Description:

Include the following in the description:

- a) Name and location;
- b) Nature of the business and explanation of how the matter falls within the scope of the Department's authority;
- c) Number of employees or similar indication of its size; and
- d) A summary of the alleged discriminatory practices.

2. Source of the Proposal:

Describe how the problem to be investigated was brought to the Department's attention (e.g., DFEH staff, community groups, employees who are reluctant to file). Attach any correspondence from these sources.

3. Problem to be Investigated and Supporting Information:

Describe fully and concisely the problems to be investigated. Submit information that supports the allegations of discrimination and references the source of the information. For instance, when describing the respondent's underutilization of women, give specific percentages (if known) based on specific documents, rather than saying, "The evidence shows substantial underrepresentation..." Attach documents that summarize key information.

4. Size and Scope of Investigation:

Describe the exact scope of the proposed investigation, including:

- a) The basis(es);
- b) The alleged discriminatory practices;

- c) The areas of the respondent's operations that will be examined;
 - d) The estimated number of employees affected; and
 - e) The amount of DFEH staff time that will be required.
- 5) Justification:
- Describe how this complaint meets the Department's criteria for Director's Complaints.